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MCC:MCF:mel:2001V00126

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CHARLES KENNEY,
Plaintiff

v.

JAKE MENDEZ, Warden, et al.,
Defendants

No. 1:CV-00-2143

(Rambo, J.)

(Blewitt, M.J.)

FILED
WILLIAMSPORT, PA

AUG 24 2001

MARY E. D'ANDREA, CLERK
Per. ls DEPUTY CLERK

MOTION FOR ENLARGEMENT OF TIME

Defendants request the Court for a fourteen-day enlargement of time, pursuant to Fed. R. Civ. P. 6(b), in which to file a responsive pleading in compliance with this Court's August 10, 2001, Order. Defendants state the following in support thereof:

1. Plaintiff is John Charles Kenney, an inmate incarcerated at the Allenwood United States Penitentiary in White Deer, Pennsylvania ("USP Allenwood").

2. On December 12, 2000, Kenney filed a Bivens complaint for monetary relief against four USP Allenwood employees alleging he was assaulted by Unit Manager Jesus Gonzalez and Correctional Officer James Scarborough on September 29, 1999.

3. On November 10, 1999, a three-count criminal indictment was returned against Kenney in the case of United States of America v. John C. Kenney, Crim. No. 4:CR-99-280 (M.D. Pa.). Kenney was charged with assaulting a correctional employee (in violation of 18 U.S.C. § 111(a)(1)), resisting a correctional

employee (in violation of 18 U.S.C. § 111), and possession of a contraband weapon (in violation of 18 U.S.C. § 1791(a)(2)). The victim of Kenney's assault was Jesus Gonzalez; the correctional officer Kenney resisted was James Scarborough--two of the four defendants named in the present civil action.

4. On February 26, 2001, defendants filed a motion to stay the civil action until completion of Kenney's criminal trial. The motion was granted by Magistrate Judge Blewitt on March 19, 2001. The Order stated that the stay would be automatically lifted within sixty days of the date of the conclusion of the criminal trial. Kenney appealed the Order to the District Court.

5. By Order dated April 13, 2001, Judge Rambo affirmed the Order in part and reversed in part. Specifically, Judge Rambo granted the motion to stay, but directed that the duration of the stay would be until further order of court.

6. On June 4, 2001, a jury found Kenney guilty of the weapons charge, not guilty of resisting staff, and not guilty by reason of insanity of the assault charge. Kenney is presently pending sentencing on the weapons charge. Defendants notified the Court of the trial's conclusion on that date.

7. On August 10, 2001, the Court issued an order directing defendants to file a responsive pleading by August 24, 2001. The Order was received in the United States Attorney's Office on August 15, 2001.

8. Assistant United States Attorney Dulce Donovan, to whom this case was assigned, has been out of the Office on official business from August 17, 2001, through August 24, 2001.

9. On August 20, 2001, the case was reassigned to the undersigned due to the impending departure of AUSA Donovan from the United States Attorney's Office for the Middle District of Pennsylvania.

10. On August 24, 2001, AUSA Donovan's appearance in this case was substituted with the undersigned's.

11. On August 24, 2001, defendants filed a motion and brief to transfer this case to the Honorable James F. McClure, Jr., who presided over the criminal companion case.

12. In light of the recent reassignment of this case and the pending motion to transfer the case, the undersigned requests an additional fourteen days in which to file a responsive pleading.

13. Defendants submit that plaintiff will not be prejudiced by this enlargement of time as it will allow agency counsel and the undersigned additional time in which to investigate his claims and to prepare a responsive pleading which is thorough and complete in all respects.

WHEREFORE, on behalf of defendants, the United States Attorney's Office requests a fourteen-day enlargement of time until September 7, 2001, in which to comply with the Court's

Order. Counsel certifies that she has not sought the concurrence of plaintiff because plaintiff is a prisoner proceeding pro se.

M.D. Pa. Local Rule 7.1.

Respectfully submitted,

MARTIN C. CARLSON
United States Attorney

A handwritten signature in cursive script, reading "Mary Catherine Frye".

MARY CATHERINE FRYE
Chief, Civil Division
MICHELE E. LINCALIS
Paralegal Specialist
316 Federal Building
240 West Third Street
Williamsport, PA 17703

Date: August 24, 2001

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CHARLES KENNEY,	:	
Plaintiff	:	
	:	
v.	:	Civil No. 1:CV-00-2143
	:	(Rambo, J.)
JAKE MENDEZ;	:	(Blewitt, M.J.)
JESUS "JESSE" GONZALEZ;	:	
JAMES "JIMMY" SCARBOROUGH; and	:	
KELLY M. KEISER,	:	
Defendants	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.


That this 24th day of August, 2001, she served a copy of the attached

MOTION FOR ENLARGEMENT OF TIME

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Williamsport, Pennsylvania.

ADDRESSEE:

John Charles Kenney
Reg. No. 05238-041
U.S. Penitentiary
P.O. Box 3000
White Deer, PA 17887


MICHELE E. LINCALIS
Paralegal Specialist

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CHARLES KENNEY,	:	
Plaintiff	:	No. 1:CV-00-2143
	:	(Rambo, J.)
v.	:	(Blewitt, M.J.)
	:	
JAKE MENDEZ, Warden, <u>et al.</u> ,	:	
Defendants	:	

O R D E R

NOW, this ____ day of _____, 2001, upon consideration of defendants' motion for enlargement of time in which to comply with the Court's August 10, 2001, Order, IT IS HEREBY ORDERED that the motion is granted. Defendants shall file a responsive pleading by September 7, 2001.

THOMAS M. BLEWITT
United States Magistrate Judge